KETUA POLIS NEGERI SEMBILAN & ANOR

v.

MANOHARAN DORASAMY

FEDERAL COURT, KUALA LUMPUR
HAIDAR MOHD NOOR CJ (MALAYA)
ABDUL MALEK AHMAD FCJ
ABDUL HAMID MOHAMAD JCA
[CIVIL APPEAL NO: 01-3-2003(N)]
13 NOVEMBER 2003

CRIMINAL PROCEDURE: *Disposal of property - Detention of motor vehicle by police - Seizure not immediately reported to Magistrate - Detention for more than 48 hours without any proceedings being commenced - Whether detention illegal - Whether respondent deprived of property not in accordance with law - Whether legal procedures not followed - Criminal Procedure Code s. 413 - Police Act 1967 s. 24(4) - Road Transport Act 1987 ss. 8, 10, 11, 12*

POLICE: *Powers - Seizure of property - Seizure of motor vehicle - Failure to report seizure to Magistrate - Failure to institute proceedings within 48 hours - Whether wrongful exercise of powers - Criminal Procedure Code s. 413 - Police Act 1967 s. 24(4)*

ROAD TRAFFIC: *Registration - Registrar of Vehicles - Whether duty bound to inspect vehicle before registration - Road Transport Act 1987 ss. 8, 10, 11, 12*

In February 1994, the respondent purchased a car which was brought in from Kota Kinabalu, Sabah. Before purchasing the car the respondent had checked the engine and chassis numbers thereof and found the same to be in order. This apart, the Road Transport Department ('the second appellant') had also more than once inspected the engine and chassis numbers of the car and, having found no irregularity thereon, re-registered the car to its present number NAJ 1912 and endorsed the respondent as its registered owner.

Subsequently, however, the second appellant blacklisted the car upon discovering that its documents might have been forged by a syndicate in Sabah. Following that, on 28 April 1994, the first appellant detained the car on suspicion that it was a stolen property, and it was not until 23 January 1995 that the car was released on bond to the respondent pursuant to s. 413 Criminal Procedure Code

('CPC'). Apparently, the release was triggered by a chemist report that although the car's engine number had been tampered with, there was no way of knowing its original number or the car's original owner.

The respondent alleged that the detention of the car by the first appellant was illegal, and in the circumstances claimed for declaration that he was the beneficial owner of the vehicle and also for damages. The learned trial judge took the view that the detention was lawful and therefore dismissed the summons. On appeal, however, the Court of Appeal allowed the claim and ordered for damages to be assessed ruling that the detention, upon a proper reading of s. 413 of the CPC and s. 24(4) of the Police Act 1967 ('PA'), was beyond the period permissible under the law. It was also held that although the police had every opportunity to extend the detention under s. 413 CPC, they failed to make use of that opportunity. Dissatisfied, the appellants appealed and posed the following questions of law to the apex court, namely:

(i) whether a motor vehicle which is suspected to be stolen, whose engine and chassis numbers have been tampered with and whose ownership and other details are being investigated by the police can be summarily returned to the respondent (who is not the original (true) owner of the vehicle) without an enquiry being conducted under s. 413 of the CPC;

(ii) whether s. 24(4) of the PA applies to a stolen motor vehicle but which is not a vehicle used in the commission of an offence; and

(iii) whether ss. 8, 10, 11 and 12 of the Road Transport Act 1987 ('RTA') impose a duty on the second appellant as the Registrar of Motor Vehicles to inspect every vehicle submitted for registration or transfer of registration.

Held:

Per Haidar Mohd Noor CJ (Malaya)

[1] I have had the benefit of reading the judgments in draft of my learned brothers, Abdul Malek Ahmad FCJ and Abdul Hamid Mohamad JCA and agreed with them.

Per Abdul Malek Ahmad FCJ

[1] The first question should be answered in the negative. The details enumerated in that question fall squarely on the factual circumstances of this case and what the first appellant should have done, but evidently did not do, was to resort to s. 413 of the CPC and report the matter immediately to the Magistrate who would be the only person who could decide on who should be given the possession of the said motor vehicle.

Since no report was made to the Magistrate under s. 413 of the CPC, the detention of the motor vehicle in this instance is unlawful. (p 121 d-e)

[2] As for the second question, the fact of the tampering of the engine and chassis numbers is a clear indication of an offence and of the said motor vehicle having been so used. The answer would therefore be in the positive. It follows that the first appellant should not take more than 48 hours after detaining the said motor vehicle to complete their enquiry, unless proceedings are commenced within that period in respect of any such offence in which the said motor vehicle is liable to forfeiture under any law or may properly be produced in evidence in which case it can be released to the person in charge of the said motor vehicle on bond to produce it when required. Again, failure to comply with this provision has the effect of making the continued detention of the said motor vehicle unlawful. (p 121 f-g)

[3] The third question appears to be blatantly stating what is already clear and unambiguous when one reads the provisions of s. 8, 10, 11 and 12 of the RTA. It certainly has to be answered with a resounding "yes". Consequently, this court can find no errors in the findings of the Court of Appeal. (p 121 h)

Per Abdul Hamid Mohamad JCA

[1] On the facts, the motor vehicle falls under the provision of s. 413(1) of the CPC as property "alleged or suspected to have been stolen" or "found under the circumstances which create suspicion of the commission of any offence". However, the section requires that the seizure "be immediately reported to a Magistrate" who may make an order respecting the delivery of the property. Under that section, it is only the Magistrate who has power to order delivery of the property after holding an inquiry. So, the answer to the first question is in the negative. (p 124 f-g)

[2] The second question turns on the interpretation of s. 24(4) of the PA. Clearly, the two limbs therein i.e. "which he has reasonable ground to suspect has been used in the commission of an offence against any law in force" and "to be evidence of the commission of any such offence" are disjunctive. On the facts it will be stretching the words "used in the commission of any offence" too far to say that the vehicle in question falls under that limb. There is no doubt however that the vehicle is "to be evidence in the commission of any offence". So, the answer to the second question is in the affirmative, namely s. 24(4) applies. (pp 124 h & 125 c-d)

[2a] Clearly, a police officer is empowered by that subsection to detain the vehicle, pending enquiry, for a period of forty eight hours or, if, within that period proceedings are commenced in respect of such offence and the vehicle may be produced in evidence, then the vehicle may be detained until the final determination of those proceedings. However the proviso empowers the police officer in charge of a police district to direct the release of such vehicles on terms provided by the proviso. So, on the facts, the vehicle was lawfully detained initially, whether under s. 413 of the CPC or s. 24 of the Police Act. However, under s. 24 the vehicle could only be lawfully detained for 48 hours as no proceedings were commenced. The detention after the 48 hours until it was released was clearly unlawful. The continued detention was also unlawful under s. 413 of the CPC as no report was made to a Magistrate and no order was made by a Magistrate giving the custody of the car to the police. (p 125 e-g)

[3] The law does not say that every vehicle must be inspected before registration. But, how is the registrar going to satisfy himself that the vehicle bears a clear, distinct and untampered engine and chassis number unless he inspects it. So, reading ss. 10 and 12 of the RTA together, it is clear that the sections impose a duty on the registrar to inspect every vehicle before registration or transfer of registration. So, the answer to the third question is in the affirmative. (p 127 c-d)

[4] Even though the original engine and chassis numbers and therefore the original owner could not be ascertained, but, considering that it was never proved that the vehicle was a stolen vehicle, that it was not disputed that the respondent is a *bona fide* purchaser, that the vehicle had been registered in the respondent's name and was seized from and later returned to the respondent, the orders as made by the Court of Appeal are fair and appropriate. (p 128 a-b)

[Appeal dismissed. Orders of Court of Appeal affirmed]

*[**Bahasa Malaysia** Translation of the Headnotes*

Pada Februari 1994, responden membeli sebuah kereta yang dibawa masuk dari Kota Kinabalu, Sabah. Sebelum membeli kereta tersebut responden telah memeriksa nombor enjin dan chasisnya dan mendapati semuanya dalam keadaan teratur. Selain itu, pihak Jabatan Pengangkutan Jalan ('perayu kedua') juga telah beberapa kali membuat pemeriksaan ke atas nombor enjin dan chasis berkenaan dan, setelah mendapati tidak ada apa-apa yang meragukan padanya, telah mendaftar semula kereta tersebut kepada nombor pendaftarannya sekarang, iaitu NAJ 1912 sekaligus mengesahkan responden sebagai tuan punya berdaftar kereta.

Perayu kedua bagaimanapun kemudiannya telah menyenarai-hitamkan kereta setelah mendapati bahawa dokumen-dokumennya berkemungkinan dipalsukan oleh satu sindiket di Sabah. Berikutnya, pada 28 April 1994, perayu pertama menahan kereta atas syak bahawa ia mungkin kereta curi dan kereta hanya dipulangkan kepada responden atas satu jaminan di bawah s. 413 Kanun Acara Jenayah ('KAJ') pada 23 Januari 1995. Pemulangan tersebut, kelihatannya, adalah berpunca dari laporan ahli kimia yang menyatakan bahawa walaupun nombor enjin kereta memang diubah, nombor asal atau tuanpunya asal kereta adalah tidak diketahui.

Responden mengatakan bahawa penahanan kereta oleh perayu pertama adalah tak sah, dan dengan itu telah menuntut gantirugi baginya serta perisytiharan bahawa beliau adalah tuanpunya benefisial kereta. Yang arif hakim bicara berpendapat bahawa penahanan adalah sah dan oleh itu menolak tuntutan. Walaupun begitu, semasa rayuan, Mahkamah Rayuan telah membenarkan tuntutan sekaligus memerintahkan supaya gantirugi ditaksir dengan alasan bahawa penahanan, di atas pembacaan s. 413 KAJ dan s. 24(4) Akta Polis 1967 ('AP'), adalah melampaui tempoh yang dibenarkan oleh undang-undang. Mahkamah seterusnya berkata bahawa walaupun polis mempunyai segala peluang untuk melanjutkan penahanan, peluang tersebut tidak dimanfaatkan oleh mereka. Berasa tidak puas hati perayu-perayu merayu dan membangkitkan persoalan-persoalan undang-undang berikut kepada mahkamah tertinggi, iaitu:

(i) sama ada satu kenderaan bermotor yang disyaki dicuri, yang mana nombor enjin dan chasisnya telah dipalsukan dan di mana kepemilikan serta hal-hal lain yang berkaitan dengannya masih di dalam penyiasatan polis boleh secara terus dipulangkan kepada responden (yang bukannya pemilik asal atau sebenar kenderaan) tanpa membuat apa-apa penyiasatan di bawah s. 413 KAJ;

(ii) sama ada s. 24(4) AP terpakai kepada sebuah kenderaan bermotor curi yang tidak digunakan di dalam melakukan sesuatu jenayah; dan

(iii) sama ada ss. 8, 10, 11 dan 12 Akta Pengangkutan Jalan 1987 ('APJ') mewajibkan perayu kedua selaku Pendaftar Kereta-Kereta Bermotor untuk memeriksa setiap kereta yang dihantar untuk pendaftaran atau pemindahan pendaftaran.

Diputuskan:
Oleh Haidar Mohd Noor HB (Malaya)

[1] Saya memperoleh manfaat membaca kedua-dua draf penghakiman oleh yang arif Abdul Malek Ahmad HMP dan yang arif Abdul Hamid Mohamad HMR dan bersetuju dengan mereka.

Oleh Abdul Malek Ahmad HMP

[1] Soalan pertama harus dijawab secara negatif. Perbutiran yang diperincikan dalam soalan tersebut adalah menepati halkeadaan fakta kes semasa dan apa yang perlu dilakukan oleh perayu pertama, tetapi jelas tidak dilakukan oleh mereka, adalah untuk menggunapakai s. 413 KAJ sekaligus melaporkan hal perkara kepada Majisteret yang merupakan satu-satunya orang yang boleh membuat keputusan kepada siapa milikan kenderaan bermotor berkenaan harus diserahkan. Oleh kerana tiada laporan dibuat kepada Majisteret di bawah s. 413 KAJ, penahanan kenderaan bermotor di sini adalah tidak sah.

[2] Berhubung soalan kedua, fakta pengubahan nombor enjin dan chasis adalah petanda jelas kepada suatu kesalahan dan kepada penggunaan kenderan bermotor berkenaan secara itu. Jawapan kepada soalan tersebut dengan itu adalah positif. Ianya mengikut bahawa perayu pertama tidak harus mengambil masa melebihi 48 jam bagi menyudahi penyiasatan mereka selepas menahan kereta, kecuali jika prosiding dimulakan dalam tempoh tersebut berkaitan mana-mana kesalahan yang membolehkan kenderaan bermotor berkenaan dirampas di bawah mana-mana undang-undang ataupun dikemukakan sebagai barang bukti, dalam keadaan mana ianya bolehlah dikembalikan kepada orang yang mempunyai jagaan ke atas kenderaan tersebut atas jaminan untuk mengemukakannya semula apabila dikehendaki. Sekali lagi, kegagalan mematuhi peruntukan ini menjadikan penahanan berterusan kenderaan bermotor tersebut sebagai tidak sah.

[3] Soalan ketiga secara tanpa selindung telah menyatakan apa yang sememangnya sudah jelas dari peruntukan ss. 8, 10, 11 dan 12 APJ. Ia semestilah dijawab dengan perkataan ‘ya’ yang bergema. Mahkamah ini tidak mendapati apa-apa kekhilafan pada keputusan Mahkamah Rayuan.

Oleh Abdul Hamid Mohamad HMR

[1] Berdasarkan fakta, kenderaan bermotor di sini terangkum di bawah s. 413 KAJ sebagai “alleged or suspected to be stolen” ataupun “found under circumstances which create suspicion of the commission of any offence”. Bagaimanapun, seksyen ini mengkehendaki bahawa perampasan hendaklah “dilaporkan dengan segera kepada Majisteret” yang akan membuat perintah berkaitan penyerahan harta berkenaan. Di bawah seksyen tersebut, hanya Majisteret yang mempunyai kuasa untuk memerintahkan penyerahan harta itu selepas mengadakan siasatan. Oleh yang demikian, jawapan kepada soalan pertama adalah negatif.

[2] Soalan kedua menyangkuti pentafsiran s. 24(4) AP. Adalah jelas bahawa kedua-dua cabang di dalamnya, yakni "which he has reasonable ground to suspect has been used in the commission of an offence against any law in force" dan "to be evidence of the commission of any such offence" adalah bersifat disjunktif. Di atas fakta, adalah tidak munasabah untuk mengatakan bahawa kenderaan tersebut dirangkum oleh phrasa "used in the commission of any offence". Walaupun begitu, ianya jelas bahawa kenderaan itu adalah "to be evidence in the commission of any offence". Jadi, jawapan kepada soalan kedua adalah secara afirmatif, iaitu s. 24(4) terpakai.

[3] Undang-undang tidak menyatakan bahawa setiap kenderaan mesti diperiksa sebelum pendaftaran. Namun, bagaimana pendaftar mampu memuaskan hatinya bahawa kenderaan tersebut mempunyai nombor-nombor enjin dan chasis yang betul, jelas dan tidak diubah jika pemeriksaan tidak dibuat. Oleh itu, membaca kedua-dua ss. 10 dan 12, ianya jelas bahawa seksyen-seksyen tersebut telah mewajibkan pendaftar untuk memeriksa setiap kenderaan sebelum melakukan apa-apa pendaftaran atau pemindahan pendaftaran. Oleh itu, jawapan kepada soalan ketiga adalah dalam bentuk afirmatif.

[4] Walaupun nombor enjin dan chasis asal, dan kerana itu pemilik asal, tidak dapat dipastikan, tetapi, mengambilkira bahawa kenderaan tidak dibuktikan sebagai harta curi, bahawa tidak dipertikai bahawa responden adalah seorang pembeli *bona fide*, bahawa kenderaan tersebut telah didaftarkan atas nama responden dan telah dirampas dari dan kemudian dipulangkan kepada responden, maka perintah-perintah seperti yang dibuat oleh Mahkamah Rayuan adalah adil dan teratur.

Rayuan ditolak. Perintah-perintah Mahkamah Rayuan disahkan]

Case(s) referred to:

Da Costa v. The Queen [1990] 2 AC 389 ***(refd)***

In re C (Adoption: Notice) [1999] 1 FLR 384 ***(refd)***

In re Siyaram Haruman Prasad [1963] 2 Cri LJ 219 ***(refd)***

Namichand Jain v. The Superintendent of Central Excise and Land Customs (Cachar) & Anor [1963] 2 Cri LJ 288 ***(refd)***

PP v. Chieng Yong Tiong [1996] 1 LNS 293 ***(refd)***

R v. Secretary of State for the Home Department, ex p Weatherhead 32 BMLR 72 ***(refd)***

Shelfield Corporation v. Luxford [1929] 2 KB 180 ***(refd)***

Short v. Short [1960] 3 All ER 6 ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 24(4), 413(1), (2), 523
Federal Constitution, art. 13(1)
Hire Purchase Act 1967, s. 7(1)(a)
Interpretation Acts 1948 & 1967, s. 66
Police Act 1967, ss. 10(1), (2), 24(4)
Road Transport Act 1987, ss. 8, 10, 11, 12(1)

Criminal Procedure Code [India], s. 550

For the appellants - Mary Lim Thiam Suan (Saiful Edris Zainuddin SFC)
For the respondent - D Kalai; M/s Kalai & Partners

[Appeal from Court of Appeal, Civil Appeal No: 1-302-1996]

Reported by WA Sharif

JUDGMENT

Haidar Mohd Noor CJ (Malaya):
I have had the benefit of reading the judgments in draft of my learned brothers, Abdul Malek Ahmad, FCJ and Abdul Hamid Mohamad, JCA and agreed with them. I have nothing further to add.

Abdul Malek Ahmad FCJ:
The facts are actually not in dispute. As deposed by the respondent in his affidavit in support of his application on 6 May 1995 to declare himself as the beneficial owner of a Honda Accord 2.0 Ex(i) bearing registration number NAJ 1912 (hereinafter "the said motor vehicle"), one Dewarajoo a/l Gurusamy (hereinafter "Dewarajoo") had shown him the said motor vehicle on 24 January 1994 which he had agreed to purchase. On the next day, he had taken the said motor vehicle to a motor workshop at the Mobil petrol station in Jalan Yong Shook Lin, Petaling Jaya to have it examined.

There, both he and the mechanic had, apart from examining the said motor vehicle, checked both the engine and chassis numbers and found that they tallied with the details in the registration card of the said motor vehicle. The engine number was MA 1A5-571289 and the chassis number was CB 3-7036281.

Only then was the purchase price agreed at RM70,000. On 27 January 1994, the respondent paid Dewarajoo RM10,000 and a receipt was accordingly issued. The respondent was also given the registration card.

From the details in the registration card, it is clear that Dewarajoo had bought the said motor vehicle from F & C Motor Sdn Bhd in Kota Kinabalu, Sabah and the previous registration number of the said motor vehicle was SS 9554C. Earlier to that, the registered owner was Chin Hook Kee with a post box address in Sandakan, Sabah.

According to Dewarajoo, he worked as a motor vehicle vendor and had paid a deposit to F & C Motor Sdn Bhd. He was given a time period to sell the said motor vehicle failing which the motor vehicle was to be returned and the deposit forfeited. To overcome the situation, a loan was obtained from Hong Leong Finance Berhad, formerly known as Visia Finance Bhd, in the name of Pritam Singh as the registered owner after Dewarajoo.

To get the loan from Hong Leong Finance Berhad, the purchase price was increased to RM76,000 and the respondent obtained a loan of RM60,000 by way of a hire purchase agreement dated 2 February 1994. The said motor vehicle was registered in his name on 4 February 1994 after the loan from Hong Leong Finance Bhd had been fully settled.

It was subsequently discovered by the Road Transport Department, Seremban (hereinafter "the second appellant") that a syndicate in Sabah was responsible for falsifying and forging motor vehicle registration numbers, chassis numbers and engine numbers registered in that State but eventually brought into West Malaysia and this included the said motor vehicle purchased by the respondent.

Accordingly, the said motor vehicle was detained by the police (hereinafter "the first appellant") on 28 April 1994 at 11pm and kept in the Petaling Jaya Police Station for further investigations. The respondent was told that the said motor vehicle was stolen property. He brought the police to Dewarajoo's house and Dewarajoo was accordingly arrested.

The Chemistry Department certified that the said motor vehicle's engine number had been tampered with but the original number and the original owner could not be ascertained. In the circumstances, the said motor vehicle was released to the respondent on bond pursuant to s. 413 of the Criminal Procedure Code (hereinafter "the CPC") on 23 January 1995.

Subsequently, as stated earlier, on 6 May 1995, the respondent filed an originating summons in the High Court at Seremban for a declaration that he is the beneficial owner of the said motor vehicle and that the registration effected by the second appellant was binding since they were negligent in not making a proper check of the chassis and engine numbers. He also asked for damages.

In his originating summons, the respondent had sought the following orders:

(a) a declaration that the respondent is the beneficial owner of the said motor vehicle and that the two appellants have no right to interfere with the right of the respondent under s. 7(1)(a) of the Hire Purchase Act 1967 and also under art. 13(1) of the Federal Constitution and the Road Transport Act 1987 (hereinafter "the RTA") and all the regulations thereunder. Pursuant

to that order, the respondent prayed for an order that the said motor vehicle be registered in the name of the respondent in accordance with para. (a) of s. 8 of the RTA;

(b) a declaration that the registration of the said motor vehicle by the second appellant with registration number WBD 1898 with engine number MA 1A5-571289 and chassis number CB 3-7036281 made on 10 August 1992 under s. 10 of the RTA is binding on the second respondent;

(c) that the second appellant issue a valid road tax with the registration number NAJ 1912 for the said motor vehicle; and

(d) damages for depriving the respondent of his right under art. 13(1) of the Federal Constitution and the senior assistant registrar be ordered to assess the damages.

The originating summons was dismissed with costs on 25 November 1996 by the High Court (Mohd Noor Abdullah J) on the grounds that police enquiries was still in progress and there was the possibility of competing claims between the respondent and other parties with interest as the owner of the said motor vehicle had not been ascertained.

The reasoning given by the learned trial judge was that there was an alternative remedy provided by either s. 413 of the CPC where a magistrate may enquire into the matter and release the said motor vehicle to the respondent subject to specific terms or by s. 12(1) of the RTA where the Director General or a Director may examine the said motor vehicle and ascertain the correct status of the said motor vehicle and amend the registration particulars. It was also his opinion that the respondent had purchased the said motor vehicle from the previous owner and he therefore had a right to get a good title to the said motor vehicle but had yet to take any action against the previous owner.

The appeal to the Court of Appeal (Shaik Daud Md. Ismail, Mokhtar Sidin and Mohd Saari Yusoff JJCA) was allowed on 21 September 2000. In their judgment dated 29 November 2001, the Court of Appeal said:

> In his affidavit in support of the application, the appellant deposed that on 24.1.1994 a person by the name of Dewarajoo a/l Gurusamy had shown him the said vehicle and the appellant agreed to buy the said vehicle. On 25.1.1994, the appellant took the said vehicle to a workshop at Jalan Yong Shook Lin, Petaling Jaya where the said vehicle was examined by a mechanic in the presence of the appellant where it was established that the engine number to be MA 1A5-571289 and the chassis number to be CB 3-7036281 which are the same as the one entered in the registration book of the said vehicle. On that confirmation the appellant decided to purchase the said vehicle at RM70,000.00. On 27.1.1994, the appellant paid Dewarajoo RM10,000.00, upon which Dewarajoo handed the registration book and the

said vehicle. In the registration card it is recorded that Dewarajoo bought the car from F & C Motor Sdn. Bhd. For the balance of RM60,000.00 the appellant got a loan from Hong Leong Finance secured by a Hire Purchase Agreement dated 2.2.1994. The appellant's name was registered as the owner of the said vehicle in the registration book. Before releasing the loan Hong Leong Finance made a search with the Road Transport Department, Seremban, Negeri Sembilan to confirm the details as stated in the registration book. The appellant had repaid the loan to Hong Leong Finance. On 28.4.1994, at about 11.00pm a party of police officers went to the appellant's house at No. 10, Jalan 5/33, Petaling Jaya, Selangor and seized the said vehicle. The appellant was told by the police that the said vehicle was suspected to be a stolen vehicle. The appellant informed the police that he bought the said vehicle from Dewarajoo. He then led the police party to Dewarajoo's house where the said Dewarajoo was arrested. At the Petaling Jaya Police Headquarters, the appellant was again told that the said vehicle was suspected to be a stolen vehicle.

On 4.10.1994, the appellant's solicitors wrote to the police requesting the police to release the said vehicle to the appellant under section 413 of the Criminal Procedure Code or section 24 of the Police Act on the ground that he was a *bona fide* purchaser for good value. The first respondent refused to release the said vehicle. It was stated that as a result of the seizure and the detention of the said vehicle, the appellant suffered damages. The appellant gave evidence that the nature of his employment required him to travel and because the said vehicle had been detained, he was deprived of the use of the said vehicle. In addition, he had to pay the monthly instalment of RM1,375 to Hong Leong Finance for the loan. The appellant gave evidence that he made a search at the Road Transport Department, Wilayah Persekutuan where it was confirmed that the engine and the chassis numbers were the same as the one written in the registration book handed to him. Appellant further stated that on his own he had done everything possible to ensure that the said vehicle was not a stolen property. He went on to say that the second respondent was to be blamed for issuing the registration book with the details and particulars as stated in the registration book. The Road Transport Department, Sabah and Negeri Sembilan were equally to be blamed for not carrying a proper inspection of the said vehicle and not being able to discover that the engine and chassis numbers had been tampered.

The Court of Appeal went on to say:

In reply, the respondents stated that the appellant is not entitled under the law to apply to be the beneficial owner of the said vehicle. The reasons being:

(a) On 20.9.1993, F & C Motor Sdn. Bhd. applied to have the registration number of the said vehicle be changed from SS 9554 C to the present registration number.

(b) The second respondent found that the application and the documents supporting the application were in order and duly registered the said vehicle with the present registration number NAJ 1912.

(c) In that application the company executed an indemnity letter to indemnify the second respondent from any liability in respect of that application. Indemnities were also given by the individual owners every time there was a change in name of the registered owner appearing in the registration book.

(d) The said company also made a statutory declaration that they were the legal owner of the said vehicle.

(e) After the registration, the second respondent discovered there was a syndicate of falsifying documents involving vehicles registered in Sabah.

(f) The second respondent then lodged a police report and blacklisted all the vehicles including the said vehicle.

(g) The first respondent admitted confiscating and detaining the said vehicle for investigation. As a result of that investigation the police found that the engine and chassis numbers had been tampered.

It was contended by the respondents that since the appellant is not the lawful owner of the said vehicle, the said vehicle cannot be released to the appellant. It was I further contended by the respondents that section 413 of the Criminal Procedure Code and section 24 of the Police Act 1967 provide for the release of the said vehicle to the lawful owner.

The Court of Appeal also took note that when the appeal came before them, four years had elapsed and that was more than sufficient time for police investigations to be completed.

Learned counsel for the respondent had pointed out to the Court of Appeal that the respondent had been deprived of his property not in accordance with the law. It was their contention that a motor vehicle could only be seized and detained by the police pursuant to s. 24(4) of the Police Act 1967 (hereinafter "the PA") or s. 413 of the CPC.

The Court of Appeal dealt with this point in the following manner:

Another significant factor to be taken into consideration is that under the Act the said vehicle had to be brought in for inspection before the name of the new owner could be registered in the registration book. As such the said vehicle had been brought in three times to the Road Transport Department for inspection and yet that department failed to discover or determine that the engine and chassis numbers had been tampered with.

For the above reasons we are of the view that the appellant could not be blamed with the tampering. When the said vehicle was detained beyond the period permissible under the law, the detention is illegal and the appellant has every right to complain about it. The police have every opportunity to extend the detention of the said vehicle legally *viz.* under section 413 of the

Criminal Procedure Code but they failed to make use of that opportunity and they have to face the consequences. The appellant in order to protect his rights have instituted the present action and he has every right to do so because the detention beyond the forty-eight hours as provided for by the Police Act is totally unlawful.

The appellant has given evidence that he had suffered damages as a result of the unlawful detention of the said vehicle. He had requested for the said vehicle to be released to him on bond because the nature of his work(s) required him to travel to various places in Malaysia. That request was not entertained until 23.1.1995 when the said vehicle was released to the appellant on bond. There was no evidence to contradict this evidence and the evidence that the nature of work of the appellant required him to travel extensively.

For the above reasons we find that the appellant have suffered damages with the unlawful detention of the said vehicle. For that we will allow the appellant's claim for damages. Since the appellant have not quantified the damages and also on his own request that the damages be assessed we will allow the damages to be assessed by the Senior Assistant Registrar of the High Court, Seremban.

They accordingly made the following orders:

(a) a declaration that the appellant is the beneficial owner of vehicle number NAJ 1912;

(b) a declaration that the registration book of the said vehicle be recorded with the engine number as MA 1A5-571289 and the chassis number as CB 3-7036281;

(c) an order that the second respondent do issue the necessary road tax in respect of the said vehicle after the appellant had made the necessary payment in respect of the road tax and the insurance of the said vehicle taken;

(d) that the detention of the said vehicle by the police after the forty-eight hours was not in accordance with the law and therefore the appellant is entitled to claim damages against the first respondent which is to be assessed by the Senior Assistant Registrar. Since the said vehicle was released to the appellant on 23.1.1995 the damages to be assessed is the period between 30.4.1994 to 23.1.1995. The interest for the assessed damages will attract interest at 8% per annum.

On 27 January 2003, this court (Haidar Mohd. Noor CJ Malaya, Steve Shim Lip Kiong, CJ Sabah and Sarawak and Siti Norma Yaakob, FCJ) granted leave to appeal on the following three questions:

1. Whether a motor vehicle which is suspected to be stolen, whose engine and chassis numbers have been tampered with and whose ownership and

other details are being investigated by the police can be summarily returned to the respondent (who is not the original (true) owner of the vehicle) without an enquiry being conducted under s. 413 of the CPC.

2. Whether s. 24(4) of the PA applies to a stolen motor vehicle with tampered engine and chassis numbers but which is not a vehicle used in the commission of an offence.

3. Whether ss. 8, 10, 11 and 12 of the RTA impose a duty on the second applicant as the Registrar of Motor Vehicles to inspect every vehicle submitted for registration or transfer of registration.

The first argument of senior federal counsel Dato' Mary Lim Thiam Suan for the appellants was that as the chemist had certified that the engine and chassis numbers had been tampered with, the relevant details in the registration certificate cannot be correct and accordingly the Court of Appeal cannot be correct in granting the declarations sought for by the respondent. In the event, the answer to the first question, she submitted, must clearly be in the negative.

Section 413 of the CPC states:

> 413 (1) The seizure or finding by any police officer of property taken under section 20 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be immediately reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of the property to the person entitled to the possession of it, if that person cannot be ascertained, respecting the custody and production of the property.
>
> (2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall in that case cause a notice to be served on that person informing him of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than forty-eight hours) as the Magistrate may in the notice prescribe.
>
> (3) If that person is unknown the Magistrate may direct that the property be detained in police custody, and the Chief Police Officer shall, in that case, issue a public notification specifying the articles of which the property consists and requiring any person who has any claim to it to appear before him and establish his claim within six months from the date of the public notification:
>
> Provided that, where it is shown to the satisfaction of the Magistrate that the property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate, to render impractical the sale, as hereinafter provided, of the property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience

that would thereby be involved, the Magistrate may order the property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of notification above referred to as he may determine or immediately as he thinks fit.

(4) Every notification under subsection (3) shall, if the value of the property amounts to fifty ringgit, be published in the Gazette.

The learned senior federal counsel said that s. 413(1) of the CPC requires a magistrate to ascertain the identity of the person entitled to possession of the property seized by the police and to deliver to that person such property. Section 413(2) of the CPC empowers the magistrate to stipulate conditions on such delivery. She contended that the vehicle in question fits nicely into the ambit of s. 413 of the CPC. She argued that since the respondent is alleging violation of that section, and if proved by the respondent, then the appropriate order that the Court of Appeal ought to have made was to direct compliance with s. 413 of the CPC. She added that if there was also proved any loss occasioned by the delay, then damages could be claimed. But what the Court of Appeal did in this case was "as if" to "summarily dispose" the matter by holding that the respondent is the beneficial owner and return custody of the motor vehicle to him.

She went on to submit that the language in s. 413 of the CPC is clear and unambiguous. The power and jurisdiction are vested in the magistrate which term does not include a judge of the High Court as defined in s. 66 of the Interpretation Acts 1948 and 1967 which defines "magistrate" in the following manner:

"magistrate" means a magistrate appointed under any law for the time being in force for the establishment of civil or criminal courts.

The Indian case of *In re Siyaram Haruman Prasad* [1963] (2) Cri. LJ 219 was cited as a case on point. Although that case dealt mainly with contempt, s. 523 of the CPC of India, which is in *pari materia* with our s. 413 of the CPC, came into issue in view of the seizure of property during investigations. The court held that it was only the magistrate who is seized of the matter who can make an order for the disposal of the property and no other magistrate.

In that same year in *Namichand Jain v. The Superintendent of Central Excise and Land Customs (Cachar) and Another* [1963] (2) Cri. LJ 288, it was decided that when a police officer seizes property under s. 550 of the Indian CPC, it is his duty to report the maitter forthwith to a magistrate under s. 523 and the disposal of such property has to be in accordance with the order of the magistrate. When the articles are seized by the police under s. 550, it is only a magistrate who can pass orders regarding their disposal and the Inspector General of Police has no power to order their disposal.

Consequently, it was the contention of the learned senior federal counsel that what the Court of Appeal should have done was to refer this matter to the magistrate, as was decided by the High Court in dismissing the respondent's originating summons, and for the magistrate to assess damages, if any, as well.

As for the second question, s. 24(4) of the PA provides as follows:

> 24. (4) Any police officer may cause any vehicle or vessel, which he has reasonable grounds to suspect has been used in the commission of an offence against any law in force or to be evidence of the commission of any such offence, to be moved to the nearest Police District headquarters or other convenient place, and the Officer in Charge of such Police District may thereupon cause such vehicle or vessel there to be detained, pending enquiries, for a period not exceeding forty-eight hours, or if, within that period there are commenced proceedings in respect of any such offence in which the vehicle or vessel is liable to forfeiture under any law or may properly be produced in evidence, until the final determination of those proceedings:
>
> Provided that the Officer in Charge of such Police District may, notwithstanding this subsection, direct the release of any such vehicle or vessel where he is satisfied that the owner or person in charge of such vehicle or vessel will duly produce such vehicle or vessel before the court when required, and for such purpose may require such owner or person to execute such bond or deposit such security as he may deem reasonable.

It was the opinion of the learned senior federal counsel that this provision applies only to situations where the motor vehicle has been used in the commission of an offence and not where it is itself a stolen motor vehicle. She concluded that the answer to the second question should also be in the negative.

Coming to the third question, ss. 8, 10, 11 and 12 of the RTA, despite its length, are reproduced below:

> **Keeping of register**
>
> 8. (1) A licensed registrar assigned to a registration area shall keep and maintain a register of all motor vehicles registered under this Act in the registration area to which he is assigned.
>
> (2) Such register shall be in such form and contain such information, details and particulars as the Director General may from time to time direct.

Application for registration

10. (1) Every application for the registration of a motor vehicle shall be made in the prescribed form to a licensed registrar and shall be signed by the person for the time being entitled to the possession of the motor vehicle.

(2) Notwithstanding anything in subsection (1), any person who satisfies the Director that he has been authorized in writing for that purpose by a person who is absent from Malaysia, may make application on behalf of that person for the registration of a motor vehicle, and in any such case the application shall be deemed to have been signed and made by that person.

(3) No motor vehicle shall be registered unless:

(a) such vehicle bears a clear, distinct and untampered engine and chassis number; and

(b) the prescribed fee has been paid.

(4) No motor vehicle shall be registered which does not comply with this Act as to construction, weight, equipment, use and age unless such motor vehicle has been exempted from such compliance under powers conferred by this Act.

(5) An application for the registration of a motor vehicle which is the property of the Government or of a public body shall designate, by reference to his office, an officer in the service of the Government or public body, as the case may be, in whose charge such motor vehicle will be and such person for the time being holding such office shall, for the purpose of any offence, be deemed to be the registered owner of such motor vehicle.

(6) No officer shall be deemed by reason only of subsection (5) to be guilty of an offence committed before the date on which he assumed such office.

Registration numbers

11. (1) Upon the registration of a motor vehicle, a licensed registrar shall:

(a) assign to the motor vehicle the prescribed index mark indicating the registration area in which the vehicle is registered or the status of the owner of the motor vehicle and a separate number (in this Act such mark and number are referred to collectively as "the registration number"), and such registration number shall continue to be the registration number of such motor vehicle until it is broken up, destroyed or sent permanently out of Malaysia, and such registration number shall not be assigned to any other motor vehicle;

(b) register the person by whom the application for registration was made as the owner of the motor vehicle; and

(c) issue to that person a registration certificate in the prescribed form.

(1A) Notwithstanding anything contained in paragraph (1)(a), and subject to any terms and conditions which may be prescribed from time to time by the Director General and on payment of the prescribed fee, the licensed registrar may permit any person:

(a) who is registered as the owner of a motor vehicle, to have the registration number assigned to his motor vehicle assigned to another motor vehicle which has not previously been registered, and the licensed registrar shall thereupon assign a new registration number to the first mentioned motor vehicle;

(b) who is registered as the owner of a motor vehicle, to have the registration number assigned to his motor vehicle assigned to another registered motor vehicle; or

(c) who applies to be registered as the owner of a motor vehicle which has not previously been registered to have the registration number of a motor vehicle that has been cancelled for the reason that the vehicle has been broken up, destroyed or sent permanently out of Malaysia, assigned to his motor vehicle.

(1B) Upon any assignment made under subsection (1A), the licensed registrar shall thereafter make all necessary and consequential amendments to the register and registration certificate.

(2) Notwithstanding paragraph (1)(a), the Director may change the registration number of any registered motor vehicle in respect of which fees under this Act are not payable (excluding motor vehicles belonging to the Government) and may assign the registration number of such motor vehicle to any other motor vehicle.

(3) Where two or more persons have or claim possession and use of a motor vehicle, the licensed registrar shall register as the owner of the motor vehicle:

(a) such one of those persons as may be nominated by them in the prescribed manner for the purpose of such registration; or

(b) in the event of any dispute between those persons, such one of them as may be selected for the purpose by the licensed registrar, after such inquiry as he may consider necessary.

(4) In any case referred to in paragraph (3)(a), the licensed registrar may also enter in the register and in the registration certificate the names of the other claimants to the ownership of the motor vehicle, but no such entry of the

name of any claimant shall be deemed to affect any liability which the person registered as owner may incur under this Act, or to vest in such claimant any of the rights or powers conferred by this Act on the registered owner of a motor vehicle.

(5) The decision of the licensed registrar under paragraph (3)(b) shall be final and conclusive for the purposes of this Act, but shall not be deemed to prejudice or to affect in any way the right of any other claimant to the ownership of the motor vehicle to cause his rights to be determined by a court, and the licensed registrar shall amend the register in accordance with any final order made by such court.

Inspection of motor vehicles and information

Director General

12.(1) The Director General, a Director or a licensed registrar may at any time before registration of a motor vehicle require the motor vehicle to be brought to any convenient place specified by him and to be inspected and, if necessary, to be weighed and measured and after registration may at any time require a motor vehicle to be brought as aforesaid if he has reason to believe:

(a) that the motor vehicle does not comply with the requirements of this Act;

(b) that any information furnished to him in respect of the motor vehicle is false, incorrect or misleading;

(c) that the motor vehicle is not in a serviceable condition; or

(d) that the weight, dimensions, character, construction, colour, identifying particulars or seating accommodation have been altered after the registration thereof.

(2) The registered owner of a motor vehicle shall forthwith inform the licensed registrar in writing of any circumstance or event which affects the accuracy of any entry in the register relating to the motor vehicle, and shall at the same time forward or deliver to the Director the registration certificate relating to such motor vehicle.

(2A) The registered owner shall, in the case of a change of chassis of a motor vehicle, obtain the prior approval of the Director General before such change.

(3) The registered owner of a motor vehicle shall, whenever required by a licensed registrar so to do:

(a) forthwith furnish to the licensed registrar all such information as he may require for the purpose of verifying the entries relating to such motor vehicle in the register; and

(b) forthwith forward or deliver to the licensed registrar the registration certificate relating to such motor vehicle.

(4) After a motor vehicle has been inspected, weighed or measured under subsection (1), or upon receipt of any information or proof furnished in respect of a motor vehicle under subsection (2) or (3), the licensed registrar may make such amendments in the register and in the registration certificate relating to such motor vehicle as he may consider necessary, and shall return the registration certificate to the registered owner.

(5) Any person who without reasonable excuse fails to comply with any requirement of the Director General, a Director or a licensed registrar under subsection (1) or with subsection (2) or (3) shall be guilty of an offence.

It was the view of the learned senior federal counsel that s. 12 of the RTA imposes a discretion and not a duty on the second appellant to inspect vehicles and only in the circumstances set out in sub-s. (1) where the Director General has reason to believe.

The learned senior federal counsel argued that at the worst the matter was discretionary in nature relying heavily on *R v. Secretary of State for the Home Department, ex parte Weatherhead* 32 BMLR 72, 160 JP 627; *Da Costa v. The Queen* [1990] 2 AC 389, *Sheffield Corporation v. Luxford* [1929] 2 KB 180, *Short v. Short* [1960] 3 All ER 6; *PP v. Chieng Yong Tiong* [1996] 1 LNS 293 and *In Re C (Adoption: Notice)* [1999] 1 FLR 384.

Based on these authorities and the discretionary nature of the powers given in ss. 8, 10, 11 and 12 of the RTA, the conclusion of the learned senior federal counsel is that the third question posed should also be answered in the negative.

Learned counsel for the respondent, on the other hand, submitted that the discretion conferred upon a magistrate under s. 413 of the CPC is limited to selecting one of two alternatives which is either delivering the property to the person entitled to the possession thereof or disposing of the property.

However, the court has got no discretion in the matter of finding out which person is entitled to the possession of that particular property. Consequently, his view was that the Court of Appeal order was correct in the circumstances as the motor vehicle was in the respondent's possession when detained and the appellants had conceded in the High Court that the respondent is the beneficial owner of the motor vehicle.

He was of the opinion that there was no order directing delivery to answer the first question posed but for the second and third questions, it ought to be in the positive.

I would first like to comment on the length of time the appeal came before us on 8 July 2003 considering that the High Court had dismissed the matter as

long ago as 25 November 1996 and the Court of Appeal had allowed the appeal on 21 September 2000. Leave was granted by this court only on 27 January 2003.

Since the filing of the application to declare himself the beneficial owner of the said motor vehicle, more than eight years have elapsed. The respondent had in fact bought the said motor vehicle about one year and three months before that.

Nothing seems to have materialised from the police investigations despite the lapse of time and I do not think any further period would change the situation. The said motor vehicle had been checked at least three times by the second appellant with every change of ownership and no questions have been asked as regards the details in the registration card in relation to the tampered engine and chassis numbers.

In the light of these considerations, it is my view that the first question should be answered in the negative. The details enumerated in that question fall squarely on the factual circumstances of this case and what the first appellant should have done, but evidently did not do, was to resort to s. 413 of the CPC and report the matter immediately to the magistrate who would be the only person who could decide on who should be given possession of the said motor vehicle. Since no report was made to the magistrate under s. 413 of the CPC, the detention of the said motor vehicle in this instance is certainly unlawful.

My finding on the second question is that the fact of the tampering of the engine and chassis numbers is a clear indication of the commission of an offence and that the said motor vehicle had been so used. The answer would, therefore, be in the positive. It follows that the first appellant should not take more than forty eight hours after detaining the said motor vehicle to complete their enquiries unless proceedings are commenced within the forty eight hours in respect of any such offence in which the said motor vehicle is liable to forfeiture under any law or may properly be produced in evidence in which case it can be released to the person in charge of the said motor vehicle on bond to produce it when required. Again, failure to comply with this provision has the effect of making the continued detention of the said motor vehicle unlawful.

The third question appears to be blatantly stating what is already clear and unambiguous when one reads the provisions of ss. 8, 10, 11 and 12 of the RTA. It certainly has to be answered with a resounding “yes”.

I have reproduced the relevant provisions of law for ease of reference and taking into consideration the circumstances of this case to the said provisions, I can find no error in the findings of the Court of Appeal. It is obvious that the

legal procedures have not been followed. Therefore, it is my humble view that the first question must be answered in the negative and the second and third questions in the positive.

Accordingly, I would dismiss the appeal and confirm the orders of the Court of Appeal. Each party is to bear their own costs as this is a matter of public interest. The deposit is refunded to the appellants.

Abdul Hamid Mohamad JCA:

The facts of this case which are not in dispute may be summarised as follows:

On 24 January 1994 the respondent agreed to purchase a Honda Accord 2.1 Ex (I) bearing registration number NAJ 1912 from one Dewarajoo. On the following day the respondent took the vehicle to a motor workshop to have it examined. The mechanic and the respondent examined the vehicle and checked its engine and chassis numbers. They found that the engine number was MA 1A5-571289 and the chassis number was CB3-7036281. The purchase price was agreed at RM70,000.

On 27 January 1994, the respondent paid Dewarajoo RM10,000. He was given the vehicle as well as its registration card. The registration card shows that Dewarajoo had bought the vehicle from F & C Motor Sdn. Bhd. in Kota Kinabalu, Sabah. The registration number of the vehicle then was SS9554C. For the purpose of obtaining a loan from Hong Leong Finance Berhad, the vehicle was registered in the name of one Peritam Singh. However, when the loan was fully settled, the vehicle was registered in the respondent's name.

Subsequently the Road Transport Department Seremban ("the second appellant") discovered that there was a syndicate in Sabah that was responsible for falsifying and forging vehicle registration numbers, engine numbers and chassis numbers of vehicles brought from Sabah to Peninsular Malaysia.

On 28 April 1994 the said vehicle was detained by the police ("the first appellant"). The respondent was told that the vehicle was a stolen property. The respondent brought the police to Dewarajoo's house. Dewarajoo was arrested.

The vehicle was sent to the Chemistry Department for examination. It was subsequently confirmed that the vehicle's engine number had been tampered with but the original number could not be ascertained. On 23 January 1995, the vehicle was released to the respondent on a bond pursuant to s. 413 of the Criminal Procedure Code.

On 6 May 1995, the respondent filed an originating summons in the High Court praying for the following orders:

(1) A declaration that the appellant is the beneficial owner of the said vehicle and that the two respondents have no right to interfere with the right of the appellant under section 7(1)(a) Hire Purchase Act 1967 and also under Article 13(1) of the Federal Constitution and the Road Transport Act 1987 and all the regulations thereunder. Pursuant to that order, the appellant prayed for an order that the said vehicle be registered in the name of the appellant in accordance with paragraph (a) of section 8 of the Road Transport Act.

(2) Secondly, the appellant seeks a declaration that the registration of the said vehicle by the second respondent with registration number WDB 1898 with engine number Ma 1A5-571289 and chassis number CB 3-7036281 made on 10.8.1992 under section 10 of the Road Transport Act 1987 is binding on the second respondent.

(3) The appellant also prayed for an order that the second respondent issued a valid road tax with the registration number NAJ 1912.

(4) The respondents pay damages for depriving the appellant of his right under Article 13(1) of the Federal Constitution and the Senior Assistant Registrar be ordered to assess the damages.

The originating summons was dismissed by the High Court. Appeal to the Court of Appeal was allowed on 21 September 2000. The Court of Appeal made the following orders:

(a) a declaration that the appellant is the beneficial owner of vehicle number NAJ 1912.

(b) a declaration that the registration book of the said vehicle be recorded with the engine number as MA 1A5-571289 and the chassis number as CB 3-7036281;

(c) an order that the second respondent do issue the necessary road tax in respect of the said vehicle after the appellant had made the necessary payment in respect of the road tax and the insurance of the said vehicle taken;

(d) that the detention of the said vehicle by the police after the forty-eight hours was not in accordance with the law and therefore the appellant is entitled to claim damages against the first respondent which is to be assessed by the Senior Assistant Registrar. Since the said vehicle was released to the appellant on 23.1.1995 the damages to be assessed is the period between 30.4.1994 to 23.1.1995. The interest for the assessed damages will attract interest at 8% per annum.

On 27 January 2003 this court granted leave to appeal on the following questions:

1. Whether a motor vehicle which is suspected to be stolen, whose engine and chassis numbers have been tampered with and whose ownership and other details are being investigated by the police can be summarily returned to the respondent (who is not the original (true) owner of the vehicle) without an enquiry being conducted under section 413 of the CPC.

2. Whether section 24(4) of the PA applies to a stolen motor vehicle with tampered engine and chassis numbers but which is not a vehicle used in the commission of an offence.

3. Whether section 8, 10, 11 and 12 of the RTA impose a duty on the second applicant as the Registrar of Motor Vehicle to inspect every vehicle submitted for registration or transfer of registration.

Question No. 1

Section 413(1) of the CPC provides:

> 413. (1) the seizure or finding by any police officer of property taken under section 20 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be immediately reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of the property to the person entitled to the possession of it, if that person cannot be ascertained, respecting the custody and production of the property.

On the facts of this case, I have no doubt that the motor vehicle falls under the provision of this section as being property "alleged or suspected to have been stolen" or "found under the circumstances which create suspicion of the commission of any offence." However, the section requires that the seizure "be immediately reported to a magistrate" who may make an order respecting the delivery of the property. Under that section, it is only the magistrate who has power to order the delivery of the property after holding an inquiry. So, the answer to the first question is in the negative.

Question No. 2

The second question turns on the interpretation of s. 24(4) that reads:

> 24. (4) Any police officer may cause any vehicle or vessel, which he has reasonable grounds to suspect has been used in the commission of an offence against any law in force or to be evidence of the commission of any such offence, to be moved to the nearest Police District headquarters or other convenient place, and the Officer in Charge of such Police District may thereupon cause such vehicle or vessel there to be detained, pending enquiries,

for a period not exceeding forty-eight hours, or if, within that period there are commenced proceedings in respect of any such offence in which the vehicle or vessel is liable to forfeiture under any law or may properly be produced in evidence, until the final determination of those proceedings:

Provided that the Officer in Charge of such Police District may, notwithstanding this subsection, direct the release of any such vehicle or vessel where he is satisfied that the owner or person in charge of such vehicle or vessel will duly produce such vehicle or vessel before the court when required, and for such purpose may require such owner or person to execute such bond or deposit such security as he may deem reasonable.

Clearly, the two limbs ie, "which he has reasonable ground to suspect has been used in the commission of an offence against any law in force" and "to be evidence of the commission of any such offence" are disjunctive. On the facts, it will be stretching the words "used in the commission of any offence" too far to say that the vehicle in question falls under that limb. But, I have no doubt that, on the facts, the vehicle is "to be evidence in the commission of any offence."

So, the answer to the second question is, in my view, in the affirmative *ie*, s. 24(4) applies.

That being the case, clearly a police officer is empowered by that subsection to detain the vehicle, pending enquiry, for a period of forty eight hours or, if, within that period proceedings are commenced in respect of such offence and the vehicle may be produced in evidence, then the vehicle may be detained until the final determination of those proceedings. However, the proviso empowers the police officer in charge of a police district to direct the release of such vehicles on terms provided by the proviso.

So, on the facts, the vehicle was lawfully detained initially, whether under s. 413 of the CPC or s. 24 of the Police Act 1967. However, under s. 24 the vehicle could only be lawfully detained for 48 hours as no proceedings were commenced. The detention after the 48 hours until it was released was clearly unlawful. The continued detention was also unlawful under s. 413 of the CPC as no report was made to a magistrate and no order was made by a magistrate giving the custody of the car to the police.

Question No. 3

Coming now to the third question involving the second appellant.

The sections are too long to be reproduced in this judgment. Suffice to say that s. 8 imposes a duty on a licensed registrar to register motor vehicles under the Act.

Section 10(1) and (2) provides the manner in which an application for registration may be made. Subsection (3)(a) provides:

(3) No motor vehicles shall be registered unless

(a) such vehicle bears a clear, distinct and untampered engine and chassis number; and

Section 12 provides:

12(1) The Director General, a Director or a licensed registrar may at any time before registration of a motor vehicle require the motor vehicle to be brought to any convenient place specified by him and to be inspected and, it necessary, to be weighed and measured and after registration may at any time require a motor vehicle to be brought as aforesaid if he has reason to believe:

(a) that the motor vehicle does not comply with the requirements of this Act;

(b) that any information furnished to him in respect of the motor vehicle is false, incorrect or misleading;

(c) that the motor vehicle is not in a serviceable condition; or

(d) that the weight, dimensions, character, construction, colour, identifying particulars of seating accommodation have been altered after the registration thereof.

(2) The registered owner of a motor vehicle shall forthwith inform the licensed registrar in writing of any circumstance or event which affects the accuracy of any entry in the register relating to the motor vehicle, and shall at the same time forward or deliver to the Director the registration certificate relating to such motor vehicle.

(2A) The registered owner shall, in the case of a change of chassis of a motor vehicle, obtain the prior approval of the Director General before such change.

(3) The registered owner of a motor vehicle shall, whenever required by a licensed registrar so to do:

(a) forthwith furnish to the licensed registrar all such information as he may require for the purpose of verifying the entries relating to such motor vehicle in the register; and

(b) forthwith forward or deliver to the licensed registrar the registration certificate relating to such motor vehicle.

(4) After a motor vehicle has been inspected, weighed or measured under subsection (1), or upon receipt of any information or proof furnished in respect of a motor vehicle under subsection (2) or (3), the licensed registrar may make

such amendments in the register and in the registration certificate relating to such motor vehicle as he may consider necessary, and shall return the registration certificate to the registered owner.

(5) Any person who without reasonable excuse fails to comply with any requirement of the Director General, a Director or a licensed registrar under subsection (1) or with subsection (2) or (3) shall be guilty of an offence.

We see from the provision of s. 10(3) that the registrar shall not register a vehicle unless such vehicle bears a clear distinct and untampered engine and chassis number. Section 12(1) empowers the registrar to require a motor vehicle to be brought to any convenient place to be inspected before the registration is effected. Of course, the law does not say that every vehicle must be inspected before registration. But, how is the registrar going to satisfy himself that the vehicle bears a clear, distinct and untampered engine and chassis number unless he inspects it? So, reading ss. 10 and 12 together, it is clear to me that the sections impose a duty on the registrar to inspect every vehicle before registration or transfer of registration. So, my answer to the third question is in the affirmative.

But how the inspection is to be done is another matter. Is it sufficient that a normal physical examination be done or must the examination be done by a chemist? We see that in this case, the tempering was only discovered through the examination conducted by the chemist. The tampering was not discovered by all the earlier physical examinations by the second appellant and the respondent's own mechanic together with the respondent.

I am of the view that it is unreasonable and not practical to require every inspection of the engine and chassis numbers of every vehicle to be done by the chemist, for the purpose of registration. It involves sending every vehicle to the Chemistry Department for such examination. That clearly would delay the process of registration of motor vehicles, considering the number of vehicles being registered every day. Indeed, the public would be the first to complain about the delay. So, in my view it is unreasonable to require an examination of every vehicle to be conducted by the Chemist to ascertain the engine and chassis number before registration. Normal physical examination by officers of the second appellant would suffice. After all, s. 12(1) only empowers the second appellant to inspect the vehicle. The sub-section clearly means inspection by the second appellant. The court should not read more into the provision of the law.

So, on the third question, I would answer it in the affirmative, even though I would not go so far as to require the second appellant to have the vehicle sent to and be examined by the chemist.

Regarding the order made by the Court of Appeal, even though the original engine and chassis numbers and therefore the original owner could not be ascertained, but since it was never proved that the vehicle was a stolen vehicle (even though it was suspected to be so), since there is no dispute that the respondent is a *bona fide* purchaser, since the vehicle had been registered in the respondent's name and since the vehicle was seized from and later returned to the respondent, the orders made by the Court of Appeal are fair and appropriate.

In the circumstances, I would dismiss the appeal but would order that each party pays its own costs.